

REMARKS

The Office Action mailed May 7, 2004 has been reviewed and the comments of the Patent and Trademark Office have been considered. Claims 1-23 were pending in the application with claims 7-10, 17-20, 22, and 23 being withdrawn from consideration. Claims 1, 2, 4, 5, 11-16, and 21 have been amended, no claims have been cancelled, while new claims 24-26 have been added. Therefore, claims 1-26 are pending in the application and claims 1-6, 11-16, 21, and 24-26 are presented for consideration.

This Amendment changes and adds claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, are presented, with an appropriate defined status identifier.

Claims 11-16 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Applicants have amended the claims to address the issues noted in the Office Action and submit that the pending claims meet the statutory requirements of 35 U.S.C. § 101 as currently interpreted based on the case law.

Claims 1-6 and 11-16 are rejected under 35 U.S.C. § 1.112, second paragraph, as being indefinite. With respect to the issues raised in paragraph 10 of the office action, applicants believe that the amended claims address the issues raised in sub-paragraphs a) and c). With respect to the issue raised in sub-paragraph c), applicants submit that the claim 2 is in proper format under U.S. claim drafting practice since it further qualifies (or limits) the “determining” limitation in claim 1. With respect to the issue raised in sub-paragraph d), applicants note that the claim is not indefinite since the product is intended to be run on one or more computers and the claim covers the intended scope as would be understood by one skilled in the art.

With respect to the comments regarding claim construction in paragraph 15 of the office action, applicants agree with the examiner’s use of the broadest reasonable interpretation standard for examination purposes. However, regarding claim interpretation for other purposes, applicants defer to the appropriate legal standard for claim interpretation based on intrinsic evidence (including the evolving file history) and appropriate extrinsic evidence. Applicants note that the case law cited by the examiner may be completely or

partially overruled by the current en-banc consideration of the *Phillips v. AWH Corporation* case by the Federal Circuit to address the current state of the law on claim construction.

In the Office Action, claims 1-6, 11-16, and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent 6,199,050 to Alaia et al. (hereafter “Alaia”). Claims 1-6, 11-16, and 21 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. patent 6,023,685 to Brett et al. (hereafter “Brett ‘685”). Applicants respectfully traverse these rejections for at least the following reasons.

Each of the independent claims 1, 11, and 16 recite an auction in which (1) a determination is made if *an auction parameter generated by the auction sponsor* has changed *while the auction is on-going*; and (2) *automatically* refreshing a representation of the auction at a browser of an auction participant. Neither of these features are disclosed or suggested by the applied prior art.

Specifically, Alaia relates to extending the time of an auction lot or related lots or communicating bid information but it does not disclose automatically communicating to a participant a change in an internal parameter of the auction that is generated by the sponsor of the auction. Likewise, Brett relates to displaying standing bid prices to participants in an event ticket auction but does not disclose or suggest the claimed features discussed above. Accordingly, the pending independent claims are believed to be patentable over the applied prior art

The dependent claims are also in condition for allowance for at least the same reasons, as discussed above, as the independent claims on which they ultimately depend. In addition, they recite additional patentable features when considered as a whole.

For example, new claims 24-26 recite additional features regarding the auction parameters that are not disclosed or suggested by the applied prior art and provides additional reasons for the patentability of these claims.

In view of the foregoing amendments and remarks, applicants submit that the application is now in condition for allowance. If there are any questions regarding the application, or if an examiner's amendment would facilitate the allowance of one or more of the claims, the examiner is courteously invited to contact the undersigned attorney at the local telephone number below.

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge deposit account No. 19-0741 for any such fees; and applicants hereby petition for any needed extension of time.

Respectfully submitted,

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